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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

GREY B. MORAN

Petitioner

v.

COMMONWEALTH OF VIRGINIA

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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Appendix A: Typewritten Copy of an Order of the Supreme Court of Virginia entered on May 4, 1981, denying petition for appeal.

TABLE OF AUTHORITIES

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PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF VIRGINIA

QUESTIONS PRESENTED FOR REVIEW

Can a warrantless search be justified by the "plain view" exception where the discovery of contraband is not inadvertent?

OPINION BELOW

No opinion was rendered by the Supreme Court of Virginia in its denial of the Petitioner's petition for appeal. A typed transcription of that court's order to that effect appears attached hereto as Appendix A.

JURISDICTION

The judgment of the Supreme Court of Virginia sought to be reviewed was entered on May 4, 1981. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The provisions of the United States Constitution involved are:

Amendment IV:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall

issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment XIV:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The evidence at trial, when viewed in the light most favorable to the Commonwealth, revealed that Grey B. Moran (hereinafter, the Petitioner), on October 18, 1979 at approximately 10:00 p.m. arrived at 3006 Fifth Avenue in the City of Richmond. After leaving his vehicle, the Petitioner, a white male, exited the

house accompanied by William E. Brown (hereinafter, Brown), a black male, and drove off with Brown in the Petitioner's car. William H. Wyrick (hereinafter, Wyrick), a Richmond police officer parked across the street, observed this activity and his suspicions were aroused, even though he had no prior information on either man, as a result of a white male entering a black man's home. (Tr. p. 76).

For that reason, Wyrick followed the two men to the corner of Dill Road and Burns Avenue in the City of Richmond where the Petitioner parked his vehicle and entered a house nearby. Upon his return several minutes later, the Petitioner was observed reaching up under the front bumper of his car and pulling out a plastic bag of a type known to Wyrick to be used as a package for marijuana for sale. (Tr. p. 65).

The Petitioner then drove off with Wyrick following behind. Wyrick used his radio to call for assistance and another unit, driven by Officer Acampora (hereinafter, Acampora) of the Richmond Police Department, responded and stopped Moran's vehicle by "waving the car over to the curb". (Tr. p. 98).

Wyrick went to the passenger side of the vehicle and saw Brown drop a plastic bag containing "greenish-brown plant material" to the floorboard of the car. (Tr. p. 66). Brown was then arrested for possession of marijuana. (Tr. p. 68). Wyrick then used his flashlight to examine the grille section of the front of the vehicle and discovered several more bags of contraband. (Tr. p. 69-70). Later, a further search revealed additional bags of marijuana concealed under the rear bumper and elsewhere. At some point

after the discovery of the marijuana located in the front bumper area, Moran was arrested for possession of marijuana with intent to distribute. (Tr. p. 71).

Moran, by counsel, raised the issues presented here by way of a motion to suppress first advanced at his preliminary hearing and later at his trial. Both were denied without written opinions. Moran again raised the questions in his petition for appeal to the Supreme Court of Virginia. That petition was denied without elaboration (see Appendix A).

ARGUMENT

In Coolidge v. New Hampshire, 403 U.S. 443 (1971), this Court discussed the "plain view" exception to the warrant requirement at length. As noted therein, "plain view" is often misunderstood because "in the vast majority of cases,

any evidence seized by the police will be in plain view, at least at the moment of seizure." 403 U.S. 443, 465 (emphasis in the original). In order for a seizure to be justified as being made as a product of the "plain view" doctrine without a warrant justifying the initial intrusion, as here, the government must legitimize "the initial intrusion that brings the police within plain view . . . by one of the recognized exceptions to the warrant requirement." Id. Thus an examination of the recognized exceptions to the warrant requirement is compelled here.

"Hot pursuit" pursuant to Warden v. Hayden, 387 U.S. 294 (1967), does not fit the facts of this case, nor does the exception concerning searches incident to arrest. See Chimel v. California, 395 U.S. 752 (1967). Under the facts of this

case there simply was no other, different explanation for the search of the bumper area of the car; the police looked there with the clear intention of discovering the contraband found in that location.

The importance of a prior justification for the intrusion cannot be overstated. As this Court noted in Coolidge:

> What the "plain view" cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification--whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused--and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the "plain view" doctrine may not be used to

> extend a general exploratory search from one object to another until something incriminating at last emerges.

403 U.S. 443, 466.

Coolidge then presents two limits on the use of the "plain view" doctrine; one "is that plain view alone is never enough to justify the warrantless seizure of evidence." Id at 468 (emphasis in the original). The second, and the most crucial here, "is that the discovery of evidence in plain view must be inadvertent." Id at 469. "[W]here the discovery is anticipated, where the police know in advance the location of the evidence and intend to seize it, . . . [t]he requirement of a warrant to seize imposes no inconvenience whatever, or at least none which is constitutionally cognizable in a legal system that regards warrantless searches as 'per se unreasonable' in the absence of 'exigent circumstances.'" Id

at 470-71.

Here the police, as noted, had no purpose in looking under the bumper other than finding exactly what they found. A "plain view" justification is clearly inapposite. Thus the seizure here was in violation of the Fourth Amendment.

CERTIFICATE

I hereby certify that I have mailed three (3) true and exact copies of the foregoing Petition for Writ of Certiorari to the Attorney General for the Commonwealth of Virginia at his office at 1101 East Broad Street, Richmond, Virginia 23219, first class mail, postage prepaid, on this 1st day of July, 1981.

Michael Morchower,
Counsel

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 4th day of May, 1981.

Grey B. Moran, Appellant,

against Record No. 801905
Circuit Court No. F-80-147

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Richmond, Division I

Finding no reversible error in the judgment complained of, the court refuses the petition for appeal filed in the above-styled case.

A Copy,

Teste:

Allen L. Lucy, Clerk

By:

Deputy Clerk

AFFIDAVIT OF SERVICE

In accordance with Rules of the Supreme Court of the United States I hereby certify that I have mailed this 1st day of July, 1981, the required copies (40) of the Petition for a Writ of Certiorari to the Clerk's Office of the Supreme Court of the United States.

BY: Barbara E. Grove

Lawyers Printing Co.
P. O. Box 1654
Richmond, Va. 23219

July 1, 1981

Sworn to before me this 1st day of July, 1981.

Cynthia O. Gray
NOTARY PUBLIC FOR VIRGINIA

My Commission Expires: 8/10/84